

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
MARSHALL T. AND ) No. 85A-133-SW  
ARLENE W. GLEASON )

For Appellants: Marshall and Arlene Gleason,  
in pro. per.

For Respondent: Israel Rogers  
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 18593<sup>1</sup>/<sub>1</sub> of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Marshall T. and Arlene W. Gleason against a proposed assessment of additional personal income tax in the amount of \$283 for the year 1981.

Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the year in issue.

Appeal of Marshall T. and Arlene W. Gleason

The issues presented in this appeal are whether appellants filed a valid claim for refund and whether respondent should have notified appellants sooner that a loss taken in 1981 was to be disallowed.

Appellants filed a timely joint personal income tax return for 1981 in which they claimed a small business stock loss. Respondent determined that the stock loss was incurred in 1978, and therefore was improperly claimed in 1981. The loss was disallowed and a notice of proposed assessment was issued. Appellants protested, arguing that the loss was allowable in the year incurred and that they were "entitled to a rebate of tax for the year **1978.**" Since the period for claiming a refund for 1978 had already passed, however, respondent affirmed its proposed assessment,

Appellants contend on appeal that when they filed their 1981 return, it should have been considered to be a timely filing of a claim for refund for 1978. In the alternative, they contend that if respondent had notified them of the disallowance of the loss for **1981** more promptly, they **may have** been able to respond by filing a claim before the statute of limitations had expired.

The first issue is whether appellants' **1981** tax return constitutes a valid claim for refund.

Section 19055 quite clearly provides that every claim for refund must be in writing and state the reasons for the refund. In their 1981 tax return, appellants did not claim a refund. They merely claimed a loss which was eventually found to have been a loss which occurred in 1978. We must conclude that appellants' 1981 return was not a valid claim for refund.

The final issue is whether respondent should have informed appellants sooner that their claimed loss was being denied so that appellants could have filed a timely claim for refund.

Section 19053 provides that no credit or refund shall be allowed after four years from either the last day prescribed for filing the return or one year from the date of the overpayment, whichever expires later. Appellants' 1978 tax return was due April 15, 1979. Four years from this date would be April 15, 1983. It was not until July 23, 1984, that appellants stated that they were entitled to a rebate of **tax for the 1978 overpayment.**

Appeal of Marshall T. and Arlene W. Gleason

This request was not timely and consequently is barred by the statute of limitations. Furthermore, we have **consis-**tently held that respondent is not under any duty to advise a taxpayer about a limitation period. (Appeal of F.D. Shagets, Cal. St. Bd. of Equal., July 26, 1982.)

For the above reasons, respondent's action in this matter must be sustained.

Appeal of Marshall T. and Arlene W. Gleason

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Marshall T. and Arlene **W.** Gleason against a proposed assessment of additional personal income tax **in** the amount of \$283 for the year 1981, be and the same **is** hereby sustained.

Done at Sacramento, California, this 10th day Of June , 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. **Collis**, Mr. Bennett, Mr. Dronenburg and Mr. **Harvey** present.

Richard Nevins , Chairman

Conway H. Collis , Member

William M. Bennett , Member

Ernest J. Dronenburg, Jr. , Member

Walter Harvey\* , Member

\*For Kenneth Cory, per Government Code section 7.9